

close of that crop year. Final claims must be submitted within 105 days after the close of that crop year.

(f) *Appeals.* If a determination is made by the Board staff that a particular promotional activity is not eligible for Credit-Back because it does not meet the criteria specified herein, or for any other reason, the affected handler may request the Public Relations and Advertising Committee to review the Board staff's decision. If the affected handler disagrees with the decision of the Public Relations and Advertising Committee, the handler may request that the Board review the Committee decision. If the handler disagrees with the decision of the Board, the handler, through the Board, may request that the Secretary review the Board's decision. Handlers have the right to request anonymity in the review of their appeal. The Secretary maintains the right to review any decisions made by the aforementioned bodies at his/her discretion.

[59 FR 35233, July 11, 1994]

#### **§ 981.442 Quality control.**

(a) *Incoming.* Pursuant to § 981.42(a), the quantity of inedible kernels in each variety of almonds received by a handler, including almonds of his own production, shall be determined and disposed of in accordance with the provisions of this paragraph.

(1) *Sampling.* Each handler shall cause a representative sample of almonds to be drawn from each lot of any variety received. The sample shall be drawn before inedible kernels are removed from the lot, or the lot is processed or stored by the handler. For receipts at premises with mechanical sampling equipment and under contracts providing for payment by the handler to the producer for sound meat content, samples shall be drawn by the handler in a manner acceptable to the Board and the inspection agency. The inspection agency shall make periodic checks of the mechanical sampling procedures. For all other receipts, including but not limited to field examination and purchase receipts, accumulations purchased for cash at the handler's door or from an accumulator, or almonds of the handler's own production, sampling shall be conducted or monitored by the

inspection agency in a manner acceptable to the Board. All samples shall be bagged and identified in a manner acceptable to the Board and the inspection agency.

(2) *Variety.* For the purpose of classifying receipts by variety to determine a handler's disposition obligation, "variety" shall mean that variety of almonds which constitutes at least 90 percent of a lot. If no variety constitutes at least 90 percent of the almonds in a lot, the lot shall be designated as "mixed". If the variety which constitutes at least 90 percent of the almonds in the lot is unknown, the lot shall be designated "unknown".

(3) *Analysis of sample.* Each sample shall be analyzed by or under the surveillance of the inspection agency to determine the kernel content and the proportion of inedible kernels in the sample. The inspection agency shall prepare a report for each handler showing, by variety, the total adjusted kernel weight received by handler, the inedible kernel weight and any other information as the Board may prescribe. The report shall cover the handler's daily receipt or the handler's total receipts during a period not exceeding one month, and shall be submitted by the inspection agency to the Board and the handler.

(4) *Disposition obligation.* (i) The weight of inedible kernels in excess of 1 percent of kernel weight reported to the Board of any variety received by a handler shall constitute that handler's disposition obligation. For any almonds sold inshell, the weight may be reported to the Board and the disposition obligation for that variety reduced proportionately.

(ii) If a sufficient sample is not available for any lot of almonds, the handler may establish and substantiate, to the satisfaction of the Board, the received weight, the edible and inedible kernel weights, and the adjusted kernel weight by providing sufficient information as the Board may prescribe. If the handler is only able to establish and substantiate the approximate received weight, an inedible disposition obligation of 10 percent of such received weight may be applied, upon agreement between the Board and the handler.

(5) *Meeting the disposition obligation.* Each handler shall meet its disposition obligation by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material, to crushers, feed manufacturers, feeders, or dealers in nut wastes on record with the Board as accepted users. Handlers shall notify the Board at least 72 hours prior to delivery: *Provided*, That the Board or its employees may lessen this notification time whenever it determines that the 72 hour requirement is impracticable. The Board may supervise deliveries at its option. In the case of a handler having an annual total obligation of less than 1,000 pounds, delivery may be to the Board in lieu of an accepted user, in which case the Board would certify the disposition lot and report the results to the USDA. For dispositions by handlers with mechanical sampling equipment, samples may be drawn by the handler in a manner acceptable to the Board and the inspection agency. For all other dispositions, samples shall be drawn by or under the supervision of the inspection agency. Upon approval by the Board and the inspection agency, sampling may be accomplished at the accepted user's destination. The almond meat content of each delivery shall be determined by the inspection agency and reported by the inspection agency to the Board and the handler and credited to the handlers's disposition obligation on ABC Form 8. Deliveries containing less than 50 percent almond meat content shall not be credited against the disposition obligation. Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than August 31 succeeding the crop year in which the obligation was incurred.

(6) *Inedible almonds unfit for processing.* All lots received from growers as "inedible almonds unfit for processing," shall be exempt from the requirements of paragraphs (a)(1) and (3) of this section, but shall be disposed of in their entirety (other than as pickouts), as provided in paragraph (a)(5) of this section. Disposition of these lots shall not be credited toward the disposition

obligation of paragraph (a)(4) of this section. If a grower sells or ships inedible almonds to a person other than a handler, the grower thereby becomes a handler and subject to all the requirements of this paragraph.

(7) *Accepted Users.* An accepted user's eligibility shall be subject to the following criteria:

(i) Completion of an application with the Board for accepted user status;

(ii) Submission of a business data sheet to the Board; and

(iii) The accurate and prompt submission of ABC Form 8 Part B to the Board for each lot of almonds received, supported by a public weighmaster weight certificate issued at the request of the accepted user at the time of receipt.

The eligibility of accepted users shall be reviewed annually by the Board. Handlers will not receive credit towards their disposition obligations pursuant to paragraph (a)(4) of this section for lots where the difference between the weight of the lot reported by the inspection agency on ABC Form 8 and the weight of the lot reported on the public weighmaster weight certificate exceeds 2.0 percent.

[42 FR 3160, Jan. 17, 1977, as amended at 43 FR 47969, Oct. 18, 1978; 44 FR 30075, May 24, 1979; 44 FR 67077, Nov. 23, 1979; 49 FR 40788, Oct. 18, 1984; 50 FR 47708, Nov. 20, 1985; 51 FR 36383, Oct. 10, 1986; 52 FR 45608, Dec. 1, 1987; 53 FR 26424, July 13, 1988; 56 FR 65420, Dec. 17, 1991; 59 FR 13434, Mar. 22, 1994; 61 FR 42991, Aug. 20, 1996; 62 FR 37488, July 14, 1997]

#### §981.450 Exempt dispositions.

As provided in §981.50 any handler disposing of almonds for crushing into oil, or for poultry or animal feed, may have the kernel weight of these almonds excluded from his receipts, and exempt from program obligations so long as the handler qualifies as, or delivers such almonds to, a crusher, a feeder, or dealer in nut waste; the crusher, feeder, or dealer are acceptable to the Board; each delivery is made directly to the crusher, feeder, or dealer, by June 30 of the crop year; and each delivery is certified to the Board by the handler on ABC Form 8.

[42 FR 19322, Apr. 13, 1977]